

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jeffery A. Johnson,

Plaintiff,

v.

Case No. 2:13-cv-25

**Muskingum Co. Sheriff's
Dept., et al.,**

Judge Michael H. Watson

Defendants.

ORDER

Plaintiff brings this prisoner civil rights action under 42 U.S.C. § 1983 and state law. Plaintiff alleges that he choked on an apple stem when he was eating apple crisp while he was detained at the Muskingum County jail. He avers that while he was choking on the stem, he stumbled and his head struck the jail cell's bars, causing him to lose consciousness. Plaintiff asserts that when he regained consciousness he experienced a great deal of pain and requested medical treatment, but his request was denied.


On November 4, 2013, the U.S. Magistrate Judge issued an Order and Report and Recommendation, ECF No. 49, in which she recommended that Defendant Aramark Correctional Services, Inc.'s ("Aramark") renewed motion for judgment on the pleadings, ECF No. 34, be granted. The Magistrate Judge also recommended that the Medical Defendants' motion to dismiss, ECF No. 39, be granted in part and denied in part. As to the latter, the Magistrate Judge advised

that Plaintiff's state law negligence claims against Nurse Shane Love and Dr. Anthony Khoury should be dismissed, but that Plaintiff's claims under 42 U.S.C. § 1983 against these Defendants should be allowed to go forward.

The Magistrate Judge expressly warned the parties of the consequences of failing timely to object to the Report and Recommendation. Plaintiff moved for, and the Magistrate Judge granted, an extension of time until January 2, 2014 to file objections to the report and recommendation. No objections have been filed to date, and the deadline to file objections has now expired. The Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **GRANTS** Aramark's renewed motion for judgment on the pleadings, ECF No. 34. Moreover, the Medical Defendants' motion to dismiss, ECF No. 39, is **GRANTED in part and DENIED in part**. Specifically, Plaintiff's state law negligence claims against Defendants Nurse Shane Love and Dr. Anthony Khoury are **DISMISSED** but Plaintiff's claims under 42 U.S.C. § 1983 against these Defendants for denial of medical care will be permitted to proceed.

The Clerk shall remove ECF Nos. 34, 39, and 49 from the Civil Justice Reform Act motions report.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT